IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 581 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINCHANDRA NATWARLAL PANDYA

Versus

HIRA SHIYA RABARI DECD. THRO' HEIRS

Appearance:

MS MAMTA R VYAS for Petitioner

RULE UNSERVED for Respondent No. 1

MRS VASAVDATTA BHATT for Respondent No. 2

SERVED BY RPAD - (N) for Respondent No. 3

RULE NOT RECD BACK for Respondent No. 4

MS AVANI S MEHTA for Respondent No. 5

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/02/2001

ORAL JUDGEMENT

1. This is an appeal under Section 173 of the Motor Vehicle Accidents Act (for short "Act"), 1988 against the judgement and award dated 14.2.2000 recorded by the learned Motor Accident Claim Tribunal (Aux.) at Porbandar in Motor Accident Claim Petition No. : 196/93 under which, the learned Tribunal dismissed the said petition of the present appellant - original petitioner for getting compensation under Section 166 of the Act on the ground that the petitioner was directed to join the owner, driver and Insurance Company of the second truck and despite the said order, the appellant - original petitioner did not join them and therefore, as a consequence thereof, the said petition was dismissed by the learned Tribunal.

2. Feeling aggrieved by the said judgement and award of the learned Tribunal, the appellant has preferred this appeal before this Court. It has been mainly contended here that even if it was absolutely necessary for the appellant - original petitioner to join the owner, driver and insurance company of the second truck, then also, the claim petition should not have been dismissed for the said non joinder and therefore, the judgement and award of the learned Tribunal are illegal and erroneous and deserve to be set aside. It is therefore, prayed that the present appeal be allowed, the judgement and award of the learned Tribunal be set aside and the original claim petition be restored on file and it may be ordered to be transferred from Porbandar to Bhavnagar.

3. Notice for final disposal was issued by the Court at the first instance. Mrs. Vasvadatta Bhatt appears for respondent Nos. 1 and 2 and the insurance company is being represented by Ms. Avani Mehta. I have heard the learned advocates for the parties and have perused the papers.

4. Now, it is true that the learned Tribunal had directed the present appellant to join the owner, driver and insurance company of the second truck.

5. It is not in much dispute that the appellant did not join them as parties, despite the orders of the learned Tribunal.

6. At the same time, it has been contended on behalf of the appellant that despite the efforts made by the present appellant, it was not possible to gather the said details about the names of the driver, owner and the insurance company of the said truck.

7. It appears that two vehicles collided. One of them was S.T. Bus and another was motor truck bearing No. : GTP - 4453. The bus driver and the owner of the S.T. Bus have been joined. The driver, owner and insurance company of truck No. : GTP - 4453 have also been joined.

8. It however, appears from the record that after the collusion of the bus and the truck, the truck went ahead and dashed against the second truck. The appellant was travelling in the Bus. The second truck, referred to above may have run away from the place of accident. Any way, the facts remain that the appellant was required to join the owner, driver and insurance company of the said second truck, which was not done by the appellant and therefore, the claim petition was dismissed.

9. It is to be considered here that simply because the driver, owner and insurance company of the said second truck were not joined, it was not proper on the part of the learned Tribunal to dismiss the claim of the appellant on that point. In fact, if the truck had ran away after the accident, the appellant could not get details about the names of the driver, owner and insurance company of the said vehicle. It is true that more than sufficient period had passed after the Tribunal had passed the first order for joining them as parties and the said order was not complied with by the appellant for a good passage of time.

10. At the same time, Ms. Mamta R. Vyas appearing on behalf of the appellant assures that she will make an application for joining them as parties before the learned Tribunal within 6 weeks after collecting those materials from the police investigation papers.

11. In the above view of the matter, I am of the view that the appellant should not be put to suffer on account of the aforesaid technicalities. Justice can be done by allowing the appeal and remanding the matter to the Tribunal concerned with direction to the appellant to make appropriate application within 6 weeks, so that the appellant may not be deprived of his legitimate right of getting compensation under Motor Vehicles Act, in which he received injuries.

12. In above view of the matter, the present appeal is allowed. The judgement and award of the learned Tribunal are set aside. The Motor Accident Claim Petition in question is ordered to be remanded back to the learned Tribunal for trial and disposal according to

law.

13. The appellant shall make an appropriate application for joining the driver, owner and insurance company of the second truck within 6 weeks.

14. If this is not be done by the appellant, the learned Tribunal will naturally be at liberty to pass appropriate order after hearing the parties to the petition. At the same time, I do not pass any order with respect to the prayer of the appellant in Civil Application No. 4870/2000 in First Appeal No. 581/2000 in respect of the transfer of the petition from Porbandar to Bhavnagar and it may be open to the petitioner to take up appropriate proceedings before the appropriate court in this behalf and the Court concerned will naturally pass an appropriate order according to law as and when such an application is filed.

15. With these observation, this appeal stands disposed of as aforesaid.

(D.P. Buch,J.)
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